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March 20, 2015

Ms. Leslie Patterson
Remedial Project Manager
U. S. Environmental Protection Agency
77 West Jackson Boulevard (SR-6))
Chicago, IL 60604-3590

RE: Special Notice Letter - South Dayton Dump & Landfill Site in Moraine, Ohio
Our File No.: 17037.339978

Dear Ms. Patterson:

I am writing on behalf of PPG Industries, Inc. ("PPG") in response to U. S. EPA Region 5's Special Notice Letter dated January 16, 2015, regarding the South Dayton Dump and Landfill in Moraine, Ohio ("the Site" or "SDDL"). The Special Notice Letter ("SNL") purports to notify PPG of its potential responsibility under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9607(a), and invites PPG to attempt to resolve that responsibility by participating in formal negotiations with EPA to conduct or finance a Remedial Investigation and Feasibility Study (RI/FS) and reimbursing EPA for its costs incurred to date. As explained in greater detail below, in the absence of any credible evidence linking PPG to the Site, PPG declines EPA's invitation to participate in the RI/FS negotiations and reimburse the Agency for its past response costs.

The SNL states that PPG has been identified as a potentially responsible party (PRP) that contributed hazardous substances to the SDDL based on an extensive review of records related to the release and/or disposal of hazardous substances at the Site. After receiving the SNL, PPG requested copies of all nexus information/documents in EPA's possession or control relating to any PPG involvement with, or connection to, the Site. In follow-up communications, Thomas Nash, Associate Regional Counsel, confirmed that EPA has no evidence linking PPG to the Site other than testimony given by Edward Grillot in *Hobart v. Dayton Power and Light*, CA No. 3:13-CV115 (S. Dist. Ohio) ("*Hobart III*").

Mr. Grillot, whose family was extensively involved in the ownership/operation of the SDDL, worked periodically at the Site over an approximate 20-year period of time. He did not identify PPG as a landfill customer during his 2012 deposition in *Hobart I* but did testify, in the *Hobart III* litigation, that he observed paint containers/materials bearing a

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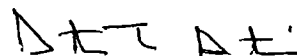
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Pittsburgh Paints label present at the Site. Critically, however, on cross-examination Mr. Grillot did not know the source of those materials other than a construction contractor, with no affiliation to PPG, who took used building materials to the Site. He did not recall seeing a Pittsburgh Paints truck at the Site, and he confirmed multiple construction contractors used the Site to dispose of empty paint containers, brushes and the like. It is axiomatic that a manufacturer of a useful product bears no CERCLA arranger liability where a third-party purchaser later arranges for the disposal of the product. *See generally Burlington Northern & Santa Fe Ry. v. United States*, 556 U.S. 599, 610 (2009). Indeed, Judge Rice recently reaffirmed this principle in *Hobart III*. *See* Decision and Entry Overruling Defendant DAP Products Inc.'s Motion for Summary Judgment (September 14, 2014). Thus, even if a contractor or other party did purchase PPG paint products and later transported residue materials to the Site, no CERCLA arranger liability could be imposed on PPG. Accordingly, a full review of Mr. Grillot's testimony does not support PPG's alleged CERCLA liability.

In addition, PPG has not owned/operated any manufacturing facility in the greater Dayton area for nearly 60 years when, in 1957, the Thresher Varnish plant was closed. As reflected in PPG's response to the Congressional Eckhardt Survey (enclosed), wastes generated at that facility were either processed on-site or taken to a location other than the South Dayton Dump and Landfill. The only other production facility owned/operated by PPG within a 50-mile radius of the Site was a former ink plant located in Woodlawn, Ohio. Neither the Woodlawn nor Thresher facility manufactured the Pittsburgh Paints brand. No information has been developed suggesting that wastes generated at either facility were taken to the SDDL. The plaintiffs in the *Hobart III* litigation have not made such a claim, and Mr. Grillot (or any other witness) has offered no such testimony. No transporter using the Site or other PRP has linked PPG to the SDDL. PPG's investigation has also not revealed any such connection. The unlikelihood of wastes being transported from the Woodlawn facility to the Site is further corroborated by the significant distance between those locations (≥40 miles) and the multiplicity of closer disposal options.

PPG has consistently cooperated with EPA Region 5 and at other sites around the country where a record of PPG's responsibility has been demonstrated. Here, however, despite extensive regulatory scrutiny and years of investigation by the *Hobart* plaintiffs, no credible evidentiary source has implicated PPG as a liable party at the Site. In the absence of any supporting factual or legal basis, PPG is unable to participate in undertaking the RI/FS or reimbursing the Agency for its past costs. Should evidence be developed to support PPG's asserted nexus to the Site, PPG reserves its rights to reconsider its participation.

Very truly yours,



Peter T. Stinson

PTS:rs

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cc: Thomas Nash, EPA Associate Regional Counsel
Steven F. Faeth, PPG - Corporate Counsel
Thomas J. Ebbert, PPG - Manager, Remediation

633045.1



File
INTER-OFFICE CORRESPONDENCE

To: P. M. King
General Office

Date: July 13, 1979

From: L. N. Streff

Location: Springdale R&D

Subject: ECKHARDT SURVEY RESPONSE -
C&R Closed Facilities

Attached are two sets of completed survey forms for the following former Divisional Facilities where activities were moved to other C&R locations:

Thresher Varnish - Dayton, Ohio
Barreled Sunlight - Keene, N.H.
M. B. Suydam Division - Pittsburgh, PA
Portland Factory - Portland, OR
Ditzler Color Division - Detroit, MI
Newark Factory - Newark, NJ

Information contained in these responses was developed through telephone interviews of former employees at these locations. A sheet outlining pertinent information is attached to the survey form for each facility.

L. N. Streff
L. N. Streff

/n

cc: H. E. Gilbert
R. F. Wilkinson

FACILITY

Thresher Varnish Company, Dayton, Ohio

CLOSURE DATE

1957

PERSONS CONTACTED

Factory Manager

- 1) Solvent was redistilled by unknown contractor.
- 2) Drums were burned out by unknown contractor.

Production Superintendent

- 1) Solvent was redistilled in plant.
- 2) The following wastes were disposed of:
 - a) Sludges from solvent still
 - b) Floor washes.
 - c) Defective product.
- 3) Wastes loaded into 55 gallon drums and hauled by PPG trucks to a privately owned dump somewhere north of Dayton - approximately 10 miles.

FORM A: GENERAL FACILITY INFORMATION

Company Name: PPG INDUSTRIES INC
 Facility Name: THRESHER VARNISH CO.
 Address:
 No. Street
 DAYTON OHIO
 City State Zip Code
 Name of Person Completing Form: L. N. STREFF
 Position: MGR, ENV. ENG & CONTROL
 Phone Number: (412) 274-4500

1. Year Facility Opened 19 25 (10-11)
2. Primary SIC Code , 2851 (12-15)
3. Estimate the total amounts of process wastes (excluding wastes sold for use) generated by this facility during 1978:

thousand gallons	<u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u>	(16-24)
hundred tons	<u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u>	(25-32)
thousand cubic yards	<u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u> <u> </u>	(33-41)
4. Estimate (in whole percents) how these process wastes generated in 1978 were disposed of:

in landfill	<u> </u> <u> </u> <u> </u>	(42-44)
in pit/pond/lagoon	<u> </u> <u> </u> <u> </u>	(45-47)
in deep well	<u> </u> <u> </u> <u> </u>	(48-50)
incinerated	<u> </u> <u> </u> <u> </u>	(51-53)
reprocessed/recycled	<u> </u> <u> </u> <u> </u>	(54-56)
evaporated	<u> </u> <u> </u> <u> </u>	(57-59)
unknown	<u> </u> <u> </u> <u> </u>	(60-62)
other (Specify _____)	<u> </u> <u> </u> <u> </u>	(63-65)
5. What is the total number of known sites (including disposal on the property where this facility is located as one site) that have been used for the disposal of process wastes from this facility since 1950?..... 1-1-1 (66-68)

COMPLETE ONE FORM "B" FOR EACH OF THE SITES

6. Have any of the process wastes generated at this facility been hauled (removed) from this facility for disposal? (yes=1; no=2) 1 (69)

IF YES, COMPLETE FORM "C"
7. Do you know the disposal site locations of all of the process waste hauled from your facility since 1950? (yes=1; no=2) 2 (70)

IF NO, COMPLETE ONE FORM "D" FOR EACH FIRM OR CONTRACTOR WHO TOOK WASTE TO AN UNKNOWN LOCATION
8. Specify the earliest year represented by information from company or facility records supplied on this and other forms 19 1-1 (71-72)
9. Specify the earliest year represented by information from employee knowledge supplied on this and other forms 19 50 (73-74)